

INSTITUTIONAL CONSTRAINTS AND COLLEGIALITY AT THE COURT OF JUSTICE OF THE EUROPEAN UNION: A SENSE OF BELONGING?

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ABSTRACT

This article examines how the judicial selection, appointment and renewal processes deeply constrain and influence decision making processes at the Court of Justice. The short tenure period combined with the permanent triennial renewal of sitting judges are a source of instability at the Court of Justice and the discretion left to Member States for renewal is a concern for judicial independence. Besides, even if Member States were to concur on the core requirements of judicial merit, they may disagree on what judicial merit means in the context of the Court of Justice – in the same way that they have different views about European integration and the Court's role in that respect. Against this institutional background, we argue that collegiality as a constitutive value is a safeguard of independence as much as it facilitates the development of a common discourse within which individual decisions will be made. In this context, the development of legal principles is no worse than can reasonably be expected; the judges display considerable independence within the constraints placed upon the Court. Collegiality in particular is a means towards a jurisprudence that is not too closely based on the legal culture or traditions of any particular Member State. But some judgments may appear to be compromises, and more radical reform will be needed for those who hanker after clearer and bolder decisions. More ambitious judicial reforms can however only succeed with in mind a single, non-renewable term of office, without any triennial renewal of the Court membership.

Keywords: Court of Justice of the European Union. Judicial independence. Judicial selection. International courts. Renewal of appointments. Judicial reform. Collegiality.

¹ Murray Edwards College, University of Cambridge. In this article we draw upon the interviews, under Chatham House Rule, of (fourteen) former and current members of the Court in 2015-2016. Under the Chatham House Rule, participants to a meeting are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed. We would like to express our gratitude to those interviewed, as well as to those who have facilitated our research in various ways: Professor Aida Torres Pérez, with a stimulating workshop on the Independence of the International Judiciary; the Max Planck Institute for Comparative and Procedural Law in Luxembourg and the i-Courts Centre, Copenhagen University for some fruitful stay and discussions there. Particular thanks go to Dr Albertina Albors-Llorens for her comments on a first draft; all errors are my responsibility.

§1. INTRODUCTION

One scholar, Ditlev Tamm, recently asked ‘to whom does the Court belong?’, swiftly answering that the Court of Justice of the European Union (‘the Court’, as a judicial body)² was not to be linked with a country or any other tangible unit, but to an abstract idea of Europe’.³ The Court essentially belongs, it was suggested, to the European citizens, even if access to the Court was only through preliminary references from domestic courts. Justice naturally must be administered ‘in the name of the people’. Yet any appraisal of the Court’s sense of belonging – another term, we believe, for discussing the Court’s legitimacy – must acknowledge the relevance of the Court’s institutional constraints upon its capacities. From that perspective, the Court’s institutional design and processes on judicial appointments paint a less ideal picture, where Member States traditionally retain some discretionary links with the Court on judicial appointments. We then seek, in this article, to demonstrate the ways in which the judicial selection, appointment and renewal processes deeply constrain and influence decision making processes, including the style of many judgements.

Our argument will proceed as follows. The Court has been designed as a *sui generis*, supranational court; it is neither an international court nor a domestic supreme or constitutional court, though it has functions similar to those. We start with a brief account of the institutional guarantees and mechanisms shaping the independence of the judge at the Court (§2). We then examine the Member States’ stronghold on selection for appointments to the Court (§3). Familiar to international courts, the current selection and appointment process fall short of subscribing to a specific vision of the ‘*bon juge européen*’, beyond the requirement that those appointed should be independent and have the qualifications for selection to the highest judicial offices in their respective countries or be jurisprudents of recognised competence. The influence of Member States on issues such as a possible specialisation of judges or gender diversity is immense.

The core guarantees of judicial independence are in place but they are silent on whether or how Member States will renew the short tenure of their individual judge or advocate general. While members of the Court are generally renewed in their post, this is far

² Unless specified, references to the ‘Court of Justice’ are to the institution, that is, the judicial branch of the European Union with (today) two distinct courts, the Court of Justice and the General Court (formerly known as the Court of First Instance).

³ D. Tamm, ‘The History of the Court of Justice since its Origin’, in Court of Justice of the European Union (ed.), *The Court of Justice and the Construction of Europe: Analyses and Perspectives on Sixty Years of Case-law - La Cour de Justice et la Construction de l'Europe: Analyses et Perspectives de Soixante Ans de Jurisprudence*, p. 14.

from certain and taken altogether, the short judicial tenure, the partial replacement of judges every three years and the discretionary power of Member States to renew the mandate of their national judge are a source of major discomfort: they undermine the principle of independence in judicial appointments and are a source of instability in the daily workings of the Court (§4).

However, within the precinct of the Court itself, the Court strives to safeguard and develop impartiality, and we argue that the principle of collegiality in judicial decision making allows the Court's culture of independence to grow in an organic fashion (§5). Judges are careful not to rely on references to their own legal culture in their decision-making process, and not just within the judgment. Collegiality as a constitutive value is a safeguard of independence as much as it facilitates the development of a common discourse within which individual decisions will be made. We conclude that against this background, the development of legal principles is no worse than can reasonably be expected; that the judges display considerable independence within the constraints placed upon the Court. Judicial reform with more ambition is needed for the Court to claim a sense of belonging to the European people rather than to their nations.

§2. INSTITUTIONAL GUARANTEES OF JUDICIAL INDEPENDENCE

Judicial legitimacy commonly refers to the acceptance of a court's impartiality and competence by the parties, society at large and, in the context of the Court, domestic jurisdictions. This acceptance arises on the basis of various factors, such as the selection of judges, their independence and the reasoning supporting the Court's judgments. As way of background to our analysis, we now consider the protection given to judicial independence.

The personal independence of the judges at the Court is guaranteed by their immunity from legal proceedings, by their irremovability apart from normal replacement and by having their right to salary and pension protected by virtue of the Consolidated Statute of the Court, annexed to the Treaties.⁴ Those protections are not absolute but derogations from them are cumbersome⁵ and likely to be only effective when a judge misconducts him or herself quite

⁴ See Articles 3 (immunity), 5 (irremovability) and 6 (deprivation of office and pension), Consolidated version of Protocol (No 3) on the Statute of the Court of Justice of the European Union, annexed to the Treaties, consolidation as of 31st August 2016.

⁵ See Articles 3 (immunity) and 6 (deprivation of office and pension), Consolidated version of Protocol (No 3) on the Statute of the Court of Justice of the European Union, annexed to the Treaties, consolidation as of 31st August 2016.

blatantly in a way which is not directly connected to the merits of his or her judicial decisions, and this has never happened until today. Guarantees are thus in place to ensure the imperviousness of European Court judges to external intervention or pressure from other European institutions in the exercise of their judicial office.⁶

Whilst dismissal is practically impossible, it may be possible to sideline some judges (and promote others) by allocating the most sensitive cases to certain judges at the expense of others. Whilst the practice of assignment differs between the Court (as a judicial body) and the General Court, some mechanisms act as basic safeguards against some possible internal abuse of power, in the shape of case assignment being considered at the regular General Meeting of the Court (as a judicial body) and in the form of a published rota between judges at the General Court.⁷ As elsewhere, the distinction between an administrative action and a purely adjudicative action may be blurred at times, particularly regarding the increased managerial responsibilities upon judges relating to caseload and case assignment. For present purposes it suffices to note the European Parliament resolution (29 April 2015) recommending the reorganisation of the institution ‘in such a way as to make a clearer separation between legal and administrative functions.’⁸ Modest though the statement is, it refers to matters of judicial governance and leadership over the organisation of the judiciary, which will influence its susceptibility to external influence. Such matters include the drive for efficiency and economy common to all European institutions: the Court has had to do more

⁶ Those guarantees make it ‘wholly unfounded’ to claim that the Court’s independence is undermined on that the ground that the Court is itself an EU institution, see Case C-199/11 *Europese Gemeenschap v. Otis NV and others*, EU:C:2012:684, para. 64; see also, on the meaning and guarantees of judicial independence, Case C-175/11, *H.I.D. and B.A. v. Refugee Applications Commissioner*, EU:C:2013:45, para 95–97.

⁷ The functions of the Court’s General Meeting are discussed below, Section 3.1. In both Courts, important cases are sent to the Grand Chamber (15 judges) in order to promote uniformity in the interpretation of EU law. In other cases, assignment is considered at the general meeting of the Court (as a judicial body) and the decision belongs to the President of the Court, see Article 60, Consolidated version of the Rules of Procedure of the Court of Justice of 25 September 2012, Rules of Procedure of the Court of Justice of 25 September 2012 [2012] OJ L 265, as amended on 18 June 2013 (OJ L 173) and on 19 July 2016 (OJ L 217); Case C-7/94 *Gaal* (1995) ECR I-1031, para 13. By comparison, at the General Court, and in line with criteria published yearly, cases are generally allocated to Chambers of three judges in turn, following four separate rotas. The President of the General Court retains the discretion to derogate from these rotas in order to take into account ‘a connection between cases or with a view to ensuring an even spread of the workload’, see [2016] OJ 2016/C 296/02 and 2016/C 296/04 and Article 25, Consolidated version of the Rules of Procedure of the Court of Justice of 25 September 2012.

⁸ Judicial governance holds surprisingly in one line in Article 9 (3), Consolidated version of the Rules of Procedure of the Court of Justice of 25 September 2012: ‘the President shall ensure the proper functioning of the services of the Court’ – as an institution. The European Parliament’s recommendation is specifically aimed at the risk, for judges, of having to rule on appeals against acts in which their authorities have been directly involved, see T-479/14 *Kendrion v. European Union*, EU:T:2016:196 and EU:T:2015:2; C-50/12 P *Kendrion v. Commission*, EU:C:2013:771; T-577/14 *Gascogne Sack Deutschland and Gascogne v. European Union*, EU:T:2017:1; C-40/12 P *Gascogne Sack Deutschland v. Commission*, EU:C:2013:768; C-58/12 P *Groupe Gascogne v. Commission*, EU:C:2013:770.

with less, with substantial gains in productivity in spite of a continuing growth in the number of new cases.⁹ However, while saving resources is ‘the constant preoccupation of the Court’, the Court has recently stated that limits in gains of productivity have been reached, creating a ‘immense challenge for all the support services, notably the languages services’.¹⁰ For the sake of judicial independence, then, the aggregate work of the Court requires vigilance about the daily interactions between administrative and judicial actions.

§3. THE MEMBER STATES’ STRONGHOLD ON JUDICIAL SELECTION

The process of selection and appointment to the Court of Justice is naturally instrumental in shaping the capacities and the legitimacy of the Court of Justice. The most influential requirement is that of having one judge per Member State, as set in Article 19 (2) TEU. The number of judges at the Court can be increased or decreased by Treaty revision only under Article 281 TFEU. By comparison, the General Court shall include ‘at least’ one judge per Member State under Article 19 (2) TEU, and the Statute of the Court of Justice, which determines the exact number of judges at the General Court, can be more easily amended under Articles 254 and 281 TFEU. This explains the focus, in recent years, on amending the number of General Court members rather than that of the Court members. In both cases, a considerable political concession is made that every Member State must have a judge, and it has great discretion in deciding whom to nominate. Basic features of the European judge nonetheless gradually emerge.

A. NATIONAL DISCRETION

The equal allocation is naturally defended strongly by some Member States. In the early 2000s there was a proposal by Council to provide additional judges for the Court of First Instance (as it was then). It was abandoned a few years later, essentially due to the inability of Member States to agree upon a rotation mechanism to allocate the additional judicial posts between Member States. Then the Court of Justice in 2011 suggested an increase of 12 judges at the General Court.¹¹ The Court’s initiative aimed to address the sharp rise in the number of

⁹ Draft General Budget of the European Union for the financial year 2017, Section IV Court of Justice of the European Union, Vol. 4, COM (2016) 300, para.1.3.

¹⁰ Ibid., para. 2.2.

¹¹ Draft Amendments to the Statute of the Court of Justice of the European Union and to Annex I thereto’, put forward to the President of the Council of the European Union by Vassilios Skouris acting as President of the Court of Justice of the European Union on 7 April 2011, Interinstitutional File 2011/0901 (COD) 87871.

cases pending before the General Court. For several years, the number of cases disposed of by the General Court was lower than the number of new cases, and so the number of pending cases was constantly rising. But under the Court's proposal, it looked as though some countries, but not others, would be able to nominate two judges at the General Court, and this prompted, within Council, some discussion of how some judges would be appointed on merit rather than purely by nationality. By 2014, Council had been unable to agree on the rotation mechanism necessary for the 2011 proposal to be approved. While some Member States insisted on having a permanent extra judge, others, such as France for example, were quite willing to agree on a rotation of judges between Member States. A document from Council noted in 2014 that 'it was impossible to overcome differences as to the method of appointment of additional Judges.'¹² The President of the Court ultimately acknowledged the political impasse and at the request of Council submitted in 2014 the amended proposal that the number of judges should be doubled at the General Court – two judges per Member States instead of one. Unsurprisingly that proposal was adopted by the European Parliament and Council in Regulation 2015/2422.¹³ The number of two judges per Member State will be doubled in three stages by 2019, with the parallel abolition of the seven-judge Civil Service Tribunal in September 2016.

The examination of the (by all accounts) botched process of reform at the General Court lies outside the remit of this article. But the pragmatic approach of the Court of Justice towards judicial reform leaves the issue of judicial merit untouched. Why can't Member States agree that merit rather than nationality should be the primary criterion? Sir Konrad Schieman, a former Member of the Court, spoke frankly about this in 2013:

'These sensitivities [of the smaller states] are of various kinds. The first is a desire not to be overlooked, and not to have one's potential judges overlooked, just because one is small. A second is a desire not to be dominated by the big states who already dominate

¹² Council of the European Union, 'Reform of the General Court of the European Union -Way forward', Doc. 16576/14. For a detailed account of the process of reform of the General Court, see F. Dehousse, 'The Reform of the EU Courts (II). Abandoning the Management Approach by Doubling the General Court', p. 25-26. One may object that there was less than one judge per Member State in the EU Civil Service Tribunal. It however had a limited scope (European Union civil servants' employment cases only) with no more than 140 cases a year. Importantly, as stated by the President of the Court in 2014, 'Appointments to the CST have never been straightforward'. Member States have had divergent views as to whether the rotation principle should be applied and, if so, to what extent. This led to the paralysis of the appointment process at some point, with Member States unable to agree within Council to make the appointments which it was required it make.

¹³ Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council of 16 December 2015 amending Protocol No 3 on the Statute of the Court of Justice of the European Union [2015] OJ L 341.

in various respects. A third is a desire to be seen by national voters to be securing as much as possible for one's own state. A fourth concerns the desire of various governments to use European Union posts to reward those whom they wish to reward or to park those whom they prefer to see away from home. In some Member States the allocation of such posts is traditionally a matter of considerable political haggling – your party can nominate a judge in Luxembourg if my party can appoint its nominee to the presidency of our top Administrative Court'.¹⁴

Even so, one might think that each Member State could find two judges of sufficient quality from each country. But, and this is the more fundamental challenge, Member States understand the notion of judicial merit differently from each other. Thus, typically in the context of career judiciaries, criteria for judicial selection on merit put the emphasis on legal knowledge and technical skills such as competences in judgment-drafting, in the conduct of proceedings in open court, or efficiency. But within European civil law-based judicial systems themselves there is no single pattern of the judge and there isn't a one-size-fits-all selection and appointment process. In some jurisdictions, politicians will strive to vet candidates for the highest courts, where points of constitutional law may be decided; in others they will allow that fellow legal professionals will have best idea of the merits of competing candidates. Processes and criteria will reflect boundaries between law and politics specific to each country, with distinct roles allocated to parliament, judges or the legal doctrine in driving legal developments.¹⁵

B. THE 'BON JUGE EUROPÉEN'

Even if Member States were to concur on the core requirements of judicial merit, they may disagree on what judicial merit means in the context of the Court of Justice – in the same way that they have different views about European integration and the Court's role in that respect. The selection criteria for the Court (as a judicial body, in Article 252 TFEU) leave accordingly much discretion to Member States in their nominating process.¹⁶ The definition

¹⁴ Sir Konrad Schiemann, in *European Committee Justice, Institutions and Consumer Protection*, House of Lords, 'Follow-up Inquiry into the Workload of the Court of Justice of the European Union. Oral and written evidence' (2013), p. 65.

¹⁵ S. Turenne, *Fair Reflection of society in judicial systems. A Comparative Study* (Springer, 2015), p. 1.

¹⁶ Those criteria are replicated from the Statute of the International Court of Justice. The Member States' discretion is no longer absolute: 'the existence of a national procedure enabling the merits of candidates to be assessed in an independent and objective manner may, when in the eyes of the panel a candidature has certain weak points, work in the candidate's favour as the panel's doubts and questions can be put aside by the trust it

of merit by the current President of the Article 255 TFEU panel ('the panel') only emphasises 'the aptitude to efficiency and rapidly exercise the judicial function.'¹⁷ For that purpose, all professional paths in the field of law are 'equally legitimate' and 'in particular' those of judge, university professor, lawyer or high-level official specialised in the field of law.'¹⁸ Some basic features of the '*bon juge européen*' are nonetheless gradually emerging through the work of the Scrutiny Panel. The panel has, for example, regularly emphasised the ability of candidates to be inclusive of legal traditions very unlike his or her own nation's traditions. The panel is expressly looking for the ability to engage with the interactions between the European legal order and the national legal systems.

Unlike other international courts, the Court deals with constitutional and ordinary jurisdictional matters; and the Court's primary interlocutors are domestic jurisdictions (rather than Member States), looking for guidance about the interpretation of European Union law through the preliminary ruling procedure (also the main bulk of the Court's case load). Those characterising features would justify, we suggest, a greater emphasis on judicial experience of any kind from nominated candidates. The need to make judgments with an eye on their likely application in Member States assumes ever greater importance as the Court, as a judicial body, intervenes today in sensitive areas with immediate repercussions on an individual's liberty (police and judicial cooperation) or right (child custody, asylum and visas inter alia). For the sense of belonging mentioned in the introduction to exist, the Court's decisions must be easily understood and properly translated into the domestic legal systems by domestic judges. Some, in our interviews, commented on the importance of nominating individuals with some experience of ordinary courts' litigation, who are not so detached from the real difficulties which domestic judges encounter when called upon to implement the Court's preliminary rulings.

If there is no appetite for a greater number of appointees with experience of ordinary litigation, then one alternative may be to encourage having a greater number of legal secretaries who are drawn from domestic judiciaries.¹⁹ The French legal secretaries, for

places in the national procedure', in Third Activity Report of the Panel provided for by Article 255 of the Treaty on the Functioning of the European Union, SN 1118/2014, p. 14.

¹⁷ J.-M. Sauvé, 'Conference: EU Court: Looking Forward', p. 15. See the panel operating rules, Council Decisions of 25 February 2010 (2010/124/EU) and (2010/125/EU).

¹⁸ Third Activity Report of the Panel provided for by Article 255 of the Treaty on the Functioning of the European Union, p. 11.

¹⁹ Michal Bobek develops a similar argument in M. Adams, de Waele and Meeusen (eds.), *Judging Europe's Judges. The legitimacy of the case law of the European Court of Justice*, p. 233.

example, can be, and sometimes are, judges on secondment, and they bring with them their knowledge and experience of national judging and national law.

Finding specialist judges is another matter of contention in relation to judicial selection. For its own domestic purposes, a country will often want to choose judges with specialist areas because of particular demand at a particular time, and it can easily do so, if necessary by setting up new courts. But setting up specialised chambers at the General Court is problematic. For a start, the General Court is defined as a generalist jurisdiction (Article 254 TFEU; specialised courts can be created under Article 257 TFEU). Still, Regulation 2015/2422, which implemented doubling the number of judges at the General Court, curiously requires that the report on the functioning of the General Court after this judicial reform, focuses in particular on ‘the further establishment of specialised chambers and/or other structural changes.’²⁰ While there may be gains in specialisation, in terms of expertise and productivity, there is an obvious risk of fragmentation of the jurisprudence between distinct chambers of the General Court. More importantly, if the General Court’s specialisation were to happen, it is likely to transfer the issue of the nationality of judges from the Council to the General Court, and it is more likely than not to politicise the distribution of judicial portfolios:²¹ Member States are likely to either advocate for their candidate to be part of a designated specialist chamber or be the specialist judge in a designated area, or they will aim for their candidates *not* to be part of a particular chamber. It is one thing to informally and from time to time assign cases judges who has gained expertise in one area, quite another step to develop specialised chambers within a generalist jurisdiction. It may not be a surprise, then, that the General Court itself has opposed such development.

There is a further important difference between the selection of domestic and European judges. A country may often wish to include measures towards greater diversity in terms of gender or race. But at European level, if a woman judge, or a judge with experience in criminal law, were to leave, one could hardly ask the Member State who nominated her to send another. At the level of the Court of Justice, diversity is the responsibility of every Member State, and consequently, individually that of no one. The European Parliament has

²⁰ Article 3.1, Regulation of the European Parliament and of the Council amending Protocol No. 3 on the Statute of the Court of Justice of the European Union. One may question the process for considering this important issue; on which see, further, F. Dehousse, ‘The Reform of the EU Courts (II). The Brilliant Alternative Approach of the European Court of Human Rights’, *ibid.*

²¹ M. van der Woude, ‘In favour of effective judicial protection: A reminder of the 1988 objectives, Concurrences, 4/2014, p. 3, cited by F. Dehousse in ‘The Reform of the EU Courts (II). Abandoning the Management Approach by Doubling the General Court’, p. 59.

attempted to procure change by introducing the objective of gender diversity in Regulation 2015/2422. This gender objective is phrased in the following terms

‘11) It is of high importance to ensure gender balance within the General Court. In order to achieve that objective, partial replacements in that Court should be organised in such a way that the governments of Member States gradually begin to nominate two Judges for the same partial replacement with the aim therefore of choosing one woman and one man, provided that the conditions and procedures laid down by the Treaties are respected’.

It is doubtful whether this provides the Panel with any constraining power in relation to gender diversity - especially as the Panel has previously stated that it doesn’t have the competence to determine the composition of the Court of Justice or of the General Court. There are good reasons behind the Panel’s restrained attitude: there is still a need to strengthen judicial selection procedures at State level, some of which can still be seen as lacking transparency or guarantees of independence from executive influences. In those jurisdictions where the line of demarcation between the political sphere and the judiciary can be blurred, the objective of gender diversity cannot detract from the prior issue of applying the rule of law without interference: the most important principle governing the functioning of the Judiciary remains the principle of separation of powers. It is not a coincidence that the same Regulation 2015/2422 re-asserts independence and impartiality as criteria for scrutiny by the Panel.

The gender objective set under Regulation 2015/2422 however entitles the Panel to require statistics about gender diversity at domestic level, and the Member State’s explanation about the possible lack of a woman candidate. Above all, these explanations and statistics should be made public, in order to foster or continue a domestic debate about gender diversity. But it is likely that those explanations will merely re-open discussions about judicial merit at the level of the Court, and raise questions about whether national benchmarks for merit unfairly favour one group over another.²²

§4. FIXED TENURE, PERIODIC RENEWAL AND JUDICIAL REFORM

²² S. Turenne, *Fair Reflection of Society*, *ibid.* Where judicial independence isn’t a priority, equality is unlikely to be promoted seriously unless the selection bodies/panels (and those advising on selection) are themselves as gender-balanced as possible, see the Council of Europe Parliamentary Assembly Recommendation 1646 (2009), ‘Nomination of candidates and election of judges to the European Court of Human Rights’, Resolution 1646 (2009), para. 5.

The main source of Member States' influence and constraint upon the Court, however, lies in the length of judicial tenure (six years) and the possibility of unlimited re-nomination by one's Member State and re-appointment. The possibility of renewing the appointment of a sitting judge carries, within any judicial appointment system, the suspicion that this could compromise the judges' actual or perceived independence, by 'throwing candidates for re-appointment at the mercy of their national (...) Government during their terms of office.'²³ The single-voice judgment style adopted by the Court at least ensures that governments do not know the opinions of their national judge, thus reducing the probability that a judge's tenure will not be renewed on accounts of his known judicial contributions. There cannot be any temptation to 'write an opinion to the outside world' as may be the case at the International Court of Justice when seeking the support of states for re-election.²⁴ Although the Court judges are generally renewed in their seat, the subject of their renewal seems today to be the 'unfinished, and almost unstarted, business' that judicial selection was once perceived to be, before the Lisbon Treaty introduced a scrutiny panel for judicial selection under Article 255 TFEU.²⁵ The possibility of renewal is a matter of discretion left to the relevant Member State and it seems that a Member State's pending decision on renewal will not be openly discussed at the Court. Equally problematic with any limited term of judicial office in any court, is the potential dependence, from the sitting judge, on his or her state for a post-bench career, especially when young judges are appointed.²⁶

Some may still argue that the Member States' power to nominate their current judge for another term of office ensures some checks upon judges too. While judicial accountability is required as a matter of principle, it is difficult to think of the Member States' discretionary power of renewal as a legitimate or appropriate means of accountability in the context of the Court. In any event, as noted above, the existence of a collegiate judgment prevents the Member State to know the contribution of its judge in the conduct of the judicial business. It could then be objected that, in such case judges have nothing to fear from the national renewal process. However, there is a lack, in many Member States, of a transparent process

²³ P. Mahoney, cited by Lord Mance, 'The Composition of the European Court of Justice. The text of a talk given to the United Kingdom Association for European Law' (19 October 2011), p. 10.

²⁴ R. Mackenzie et al., *Selecting International judges; principle, Process and Politics* (Oxford University Press, 2010), p. 210.

²⁵ Lord Mance, 'The Common Law and Europe: Differences of Style Or Substance and Do They Matter? The Holdsworth Address 2007', The Holdsworth Club of the University of Birmingham, p. 10.

²⁶ But see Article 9, Code of Conduct for Members and former Members of the Court of Justice of the European Union, Official Journal of the European Union [2016] OJC 483/01.

and criteria for renewal at the Court; non-renewal may also happen for reasons which have little to do with the professional merit of the judge, and more to do with some internal ‘political haggling’, as suggested above (Section 3.A) by Sir Konrad Schieman. Judicial accountability isn’t the issue here.

The full impact of the relatively short period of service at the Court appears as soon as one mentions the permanent triennial renewal at the Court of Justice, which concerns one half of the number of the judges.²⁷ Adding to this, it follows from some early departures that some judges will be appointed outside the normal triennial renewal procured. Franklin Dehousse suggested that the transfer of a judge from the General Court to the Court of Justice represented a damaging movement, because that judge will generally leave with his/her whole team of legal secretaries: ‘So, permanently, new people enter and begin to build a basic knowledge while others leave with their built knowledge to use it elsewhere.’²⁸ For budgetary purposes, the Court estimates the probability of Members leaving office or having their term of office renewed and, interestingly, but for budgetary purposes only, it seems to assume that only half of the Members whose term of office comes to expire will be renewed.²⁹ Thus, in October 2015, the terms of office of 18 judges at the Court expired and the Court Budget assumed that nine of those would leave office or would not see their office renewed ‘with the addition, for the sake of prudence, of four, not anticipated, departures (two at the Court and two at the General Court, based on the average in past years).’³⁰

Those current rules cause great problems to the Court, not least in terms of how they manage their case-load. Advocate General Sharpston stated in 2011 that ‘in order to ensure that judicial business is handled without interruption, it is important to know who is being renewed and who is likely to be replaced’, but, ‘Member States do not always communicate this information to the Court until rather late in the day.’³¹

²⁷ Article 9, consolidated version of Protocol (No 3) on the Statute of the Court of Justice of the European Union, annexed to the Treaties, consolidation as of 31st August 2016.

²⁸ F. Dehousse, ‘The Reform of the EU Courts. The Need for a Management Approach’ (Egmont Papers, Academia Press, 20 December 2011), p. 15. Between 2013 and 2016, the General Court went through ‘an unusual period of stability’, with only one change in the composition of the General Court, see A. Collins, ‘The General Court: Enlargement or Reform?’, Lecture delivered at the Annual European Law Conference, King’s College London (11 March 2016), p. 5.

²⁹ See the Draft General Budget of the European Union for the financial year 2015, COM (2014) 300 and the Draft General budget of the European Union for the financial year, 2016 COM (2015) 300, Section IV Court of Justice of the European Union, Vol. 4, para. 3.2.1 in each report.

³⁰ Draft General Budget of the European Union for the financial year 2015, para. 3.2.1.

³¹ European Union Committee, House of Lords, ‘14th Report of Session 2010–11. The Workload of the Court of Justice of the European Union’, HL Paper 128 (6 April 2011), para. 83.

As in many European countries too, there is a principle of continuity, i.e., that the same judge should stay with the case.³² Balancing the case load takes the form of allocating cases to the judge available rather than weighting the case as can be done in some countries.³³ It seems difficult to fairly spread the weight of the caseload between judges if one does not know who stays at the Court, who is about to leave and who, or how experienced, the newcomer will be. It also seems difficult to make good use of the experience accumulated by judges. In that respect, the instability at the General Court has been repeatedly emphasised. An often-cited illustration of the regular transfer of heavy cases between cabinets and the reopening of those cases is the case of *ICI v European Commission* in which the appeal was lodged on 20 March 2001 and judgment was handed down on 25 June 2010.³⁴ It was reallocated two times between judges and three times between chambers. Not only does uncertainty affect the individual judge, it also has a direct effect on those cases assigned to the other members of the Chamber of which those judges are members.³⁵

One may doubt that doubling the number of judges at the General Court, as decided under Regulation 2015/2422,³⁶ will fully solve this issue. The root of the instability is the inability of Member States to consider the extension of the term of judicial office (for example from six to nine years or 12 years) and the concomitant conditions that the appointment be non-renewable, with no requirement to renew half of the Court membership every three years. A single, non-renewable term would lift the perceived threat to the individual judge's independence noted above. It would unlock the potential of, or remove some of the objections to other proposed reforms. For example, a more expansive judicial discourse may become possible, including anonymous dissenting opinions (as is possible in the WTO appellate body).³⁷ The issue of specialised Chambers or judges might then become less politically-charged (see above, Section 3.B).

³² This doesn't exclude the possible transfer of a case from one judge to another to rebalance the workload.

³³ Relevant to this balancing exercise are listing reviews in order to equalise work, introduce greater flexibility and reduce waiting time.

³⁴ Case T-66/01 *Imperial Chemical Industries Ltd (ICI) v. Commission*, EU:T:2010:255.

³⁵ European Union Committee, House of Lords, '14th Report of Session 2010–11. The Workload of the Court of Justice of the European Union', para. 83.

³⁶ Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council of 16 December 2015 amending Protocol No 3 on the Statute of the Court of Justice of the European Union [2015] OJ L 341.

³⁷ We would argue that there are still reasons for not publicizing the names of the dissenters (and anonymous dissent is permissible in other courts such as the WTO appellate body): the need to ensure a post-bench career without fear of government interference and the need to ensure a uniform and consistent approach to European law for the purpose of facilitating the application, by domestic courts, of the Court's rulings.

Further, the extension of the judges' term of office to (e.g.) nine years, without a three-year interval to appoint part of the Court would establish stability within the Court. This is what happened at the European Court of Human Rights when, precisely in order to maintain continuity and reinforce that Court's independence and impartiality,³⁸ a single, non-renewable term of office (nine years) was introduced in 2010, in combination with the abolition of the system whereby large groups of judges were renewed at three-year intervals. Similar reforms at the Court would radically alter and, we suggest, clarify the sense of belonging of the Court to the benefit of the European polis, beyond the national governments' stronghold.

This would naturally trigger new issues of judicial accountability. While this topic is outside the remit of this piece, we note the proposal to make the Court accountable to domestic judges by involving the latter in matters of judicial governance of the Court, for example in the form of some High Council of the European Judiciary which would, inter alia, give opinions on the suitability of the judges proposed by Member States and approve the rules of procedures of the two jurisdictions.³⁹

In the absence of a longer but single and non-renewable term of office, judges are 'the least stable component of the whole system' compared with legal secretaries and the registry.⁴⁰ If, as has been said, the Treaty revision that is required for judicial reform is truly impossible, a working agreement remains possible, to the extent that Member States should begin any selection process with a perspective of two terms of office instead of one. At the very least, agreement from the Member States should be sought to allow the judges who are not renewed or retire to continue with their assigned cases, perhaps for fixed period of time, as happens in some international courts.⁴¹ This would provide what the Court has been

³⁸ Convention for the Protection of Human Rights (Protocol No. 14), Council of Europe Treaty Series No. 194 (13 May 2004); Explanatory Report to Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention', CETS No. 194; Parliamentary Assembly of the Council for Europe, 'Candidates for the European Court of Human Rights', Recommendation 1649 (2004), para. 1-3 and 13.

³⁹ M. van der Woude, 'Towards a European Council of the Judiciary: Some Reflections on the Administration of the EU Courts', in F. Goudappel and E. Hirsch Ballin (eds.), *Democracy and Rule of Law in the European Union* (Asser Press, 2016), p. 63.

⁴⁰ F. Dehousse 'The Reform of the EU Courts (II). Abandoning the Management Approach by Doubling the General Court', p. 57. The Discussion Circle on the Constitution set up by the Convention on the Future of Europe considered such reform but wasn't able to reach agreement, CONV 636/03, para. 8; see also the *Report by the Working Party on the Future of the European Communities Court System*, January 2000, para. 51.

⁴¹ J.-M. Sauvé, 'Intervention', in 'EU Courts: Looking forward', Conference of the Council of Bars and Law Societies of Europe (28 April 2014), p. 15; see A. Meij, 'Legal Developments. Amending the Statute of the EU Courts', 20 MJ 1 (2013), p. 132; J. Weiler (referring briefly but forcefully to 'some structural issues'), 'Epilogue:

looking for: an even firmer basis for the independence of the Court's members; it would also strengthen the continuity of its case-law.⁴²

So the influence of Member States in appointments, including the renewal of those, is substantial. They have differing conceptions of judicial merit, and have little incentive to think about the impact of their preferred candidate on the Court as a whole, e.g. in terms of expertise. There is not even a guarantee that their preferred candidates will be fluent in English or French (a matter of ongoing discussion). One may infer as consequences a number of judgments which have been so intensely negotiated that they are difficult to decipher and for domestic judges to follow.

§5. THE PRACTICE OF COLLEGIALITY

We have so far considered the pressures on the Court. Judges bring different understandings of merit and of their role at the Court, and they all too often have too little time to settle down at the Court and discover their own voice. But the Court does what it can to ensure that judges are equally assimilated in the workings of the court and this is achieved with the constitutive value of collegiality. Collegiality acts as well as a positive mechanism to enhance judicial impartiality.

A. THE GENERAL MEETING OF THE COURT

The best illustration of collegiality at work is the weekly general meeting of the Court of Justice (as a judicial body). After the parties make their written submissions to the Court, the Judge-Rapporteur will prepare a preliminary report on the cases that need to be determined and present it to the General Meeting of the Court, which comprises all members of the Court including the Advocates General. The Judge-Rapporteur will propose the formation to which the case should be assigned and the Court in its general meeting will decide, after hearing the designated Advocate General, the assignment of the case.⁴³ While not all members of the Court may have time to read the documents available for the meeting, this general meeting allows for greater cohesion in the practice of assignment, as well as building the collective

Judging the Judges – Apology and Critique', in M. Adams, de Waele and Meeusen, *Judging Europe's Judges. The legitimacy of the case law of the European Court of Justice*, p. 251-252.

⁴² *Report by the Court of Justice on certain aspects of the application of the Treaty on European Union* (Luxembourg, May 1995), p. 7.

⁴³ Articles 59 and 60, Consolidated version of the Rules of Procedure of the Court of Justice of 25 September 2012.

identity of the Court. It is one way in which members relate to each other and achieve a sense of collective independence.

These meetings may also assist in anticipating allegations of bias. Proceedings in which a Member State is a party traditionally constitute a small percentage of the overall caseload of the Court Justice.⁴⁴ The Court's decision is likely to affect the interests of all Member States, including those who are not parties to the dispute. Conversely, the ever-expanding competences of the Court make it difficult to determine in which cases the national interests of a specific State are affected to the extent that national representation within the Court would be required. Whether or not that would have been the explanation adopted at the time, the Statute of the Court that was redrafted in 1979 leaves aside the principle of the national judge in deliberations.⁴⁵ It does however preserve the right for a Member State party to the proceedings to demand that any case shall be heard before a Grand Chamber. A former judge, Konrad Schieman commented in 2013:

...‘for the purpose of doing their job well in the General Court it does not seem to me that the national origins of the judges of that court are of importance. There is occasionally something to be said for having a judge of a Member State to hand who can explain something which puzzles an outsider but this is infrequent’.

There is good reason to acknowledge the presence of the national judge within the Court. Judges may need awareness of the national context to an issue. Some issues arise which are closely connected with the domestic legal order of one of the parties concerned. Having a national judge also sustains confidence in the judicial system, which is essential in some cases when a Member State loses. At the same time, it might be said that this does not create an obvious danger that Member States might appoint their judge in the hope that he or she might give amenable judgments involving their country. The judges' individual contributions towards the judgment will not be known and as David Edward wrote, in deliberations, ‘the role of the judge of the country from which the case comes is not to urge

⁴⁴ See the Court of Justice's ‘Annual Report 2015. Judicial Activity. Synopsis of the judicial activity of the Court of Justice, the General Court and the Civil Service Tribunal’ (Luxembourg, 2016): in 2015, 61,5% of proceedings before the Court were references for a preliminary ruling; C. Tomuschat, ‘National Representation of Judges and Legitimacy of International Jurisdictions: Lessons from ICJ to ECJ?’, in I. Pernice et al. (eds), *The Future of the European Judicial System in a Comparative Perspective: 6th International ECLN-Colloquium/IACL Round Table Berlin, 2-4 November 2005* (Baden-Baden, 2006), p. 187.

⁴⁵ Until 1979, all cases were heard by the plenary Court, with the exception of staff cases. See Articles 18 and 19, consolidated version of Protocol (No 3) on the Statute of the Court of Justice of the European Union, annexed to the Treaties, consolidation as of 31st August 2016.

on the Court a solution favourable to that Member State. Such advocacy would almost certainly be counterproductive.’⁴⁶

The move away from national interests has now been endorsed as a matter of principle in the 2017 Code of Conduct for Member and Former Members of the Court of Justice of the European Union, which requires members of the Court to perform their duties ‘with complete independence and integrity, without taking account of any personal *or national interest*’ (our emphasis).⁴⁷ The Code also contains a statement about the main threat, in practice, to the Court’s independence: ‘[members of the Court] shall neither seek nor follow any instructions from the institutions, bodies, offices or agencies of the Union, the governments of the Member States or any private or public entities’.⁴⁸

The Court of Justice further held, in the case of *Chronopost*, that the right to a fair trial means that ‘every court is obliged to check whether, in its composition, it constitutes such an independent and impartial tribunal, where this is disputed on a ground that does not immediately appear to be manifestly devoid of merit.’⁴⁹ This check is an essential procedural requirement, so that the Court of Justice is required, of its own motion and as a ‘matter of public policy’, to check the regularity of the composition of the Court which delivered the judgment under appeal.⁵⁰ Clearly the General Meetings under the umbrella of collegiality have an important role here.

B. ENHANCING INDEPENDENCE AND IMPARTIALITY

Collegiality is a fundamental principle of court organisation. In a narrow sense, it is about taking a vote of the majority to decide a case, as both the General Court and the Court do in

⁴⁶ D. Edward, ‘How the Court of Justice Works’, 20 ELR 539 (1995), p. 539-558 at 557.

⁴⁷ Article 3, *Code of Conduct for Members and former Members of the Court of Justice of the European Union*.

⁴⁸ Ibid.

⁴⁹ Joined Cases C-341/06 P and C-342/06 P *Chronopost SA and La Poste v. UFX and Others*, EU:C:2008:375, para. 46. See the Court’s judicial oath, requiring judges to perform their duties ‘impartially and conscientiously and to preserve the secrecy of the deliberations of the Court’, Article 2, Consolidated version of Protocol (No 3) on the Statute of the Court of Justice of the European Union. The Court of Justice generally distinguishes between a presumption of personal impartiality from the judge (a presumption that none of the Court’s members is showing bias or personal prejudice), and the requirement of institutional impartiality, in the sense that the tribunal must offer guarantees sufficient to exclude any legitimate doubt on the impartiality of the institution, Joined Cases C-341/06 P and C-342/06 P *Chronopost SA and La Poste v. UFX and Others*, para. 54. See also C-308/07 P *Gorostiaga Atxalandabaso v. European Parliament*, EU:C:2009:103, para. 46. On judicial independence and impartiality, see, further, Case C-175/11, *D. and A. v. Refugee Applications Commissioner*, EU:C:2013:45, para 96; Case C-506/04, *Graham J. Wilson v. Ordre des avocats du barreau de Luxembourg*, EU:C:2006:587, para. 52.

⁵⁰ Joined Cases C-341/06 P and C-342/06 P *Chronopost SA and La Poste v. UFX and Others*, para. 47-48; see also Case C-367/95 P *Commission v. Sytraval and Brink’s France*, EU:C:1998:154, para. 67.

the absence of consensus. The Court itself construes the principle of collegiality in decision-making in broader terms – albeit here in a case involving the Commission:

‘The functioning of the Commission is governed by the principle of collegiality. That principle is based on the *equal participation* of the Commissioners in the adoption of decisions, from which it follows in particular that decisions should be the subject of *collective deliberation* and that all the members of the college of Commissioners should bear *collective responsibility* at political level for all decisions adopted’. (our emphasis)

Collegiality can thus be defined as the interaction between equals in decision making, in the pursuit of the greater good. We suggest that the practice of collegiality has developed within the Court to reflect some (four) distinct values. First, it ensures judicial independence from the appointing body. Thus the Court is collegiate ‘in that it operates as a relatively detached, if not cloistered institution’.⁵¹ There is no separate, concurring or dissenting, opinion at the Court. The main and good reason for the collegiate judgment remains the need to protect the independence of the judge from his or her appointing Member State.⁵² This does not entirely address the problem of renewable tenures, but at least it counters one of its most unwelcome possibilities.

Second, collegiality refers to the interactions between judges within the deliberation. Von Bogdandy interprets collegiality as ‘reciprocal controls’ upon judges,⁵³ but ‘reciprocal controls’ are only one part of the function of collegiality, which also brings persuasion into the decision making process (although in practice judicial positions may not shift significantly).⁵⁴ This is because, contrary to some national jurisdictions where seniority within the Court matters in deliberations, a principle of equality applies between judges at the Court of justice and at the General Court.

Third, collegiality is about taking collective responsibility for the judgment, with numerous drafts before the final decision is reached: ‘all members of the Court are responsible, up to the last minute, for making the judgment as good as it can be even if they

⁵¹ F. Jacobs and K. Karst, ‘The “Federal” Legal Order: The USA and Europe...A Juridical Perspective’ in M. Cappelletti et al. (eds), *Integration Through Law* (Berlin, de Gruyter, 1985), Vo.I 1, bk 1., p. 191.

⁵² S. Turenne, ‘AG’s Opinions or Separate Opinions? Judicial engagement at the CJEU’, 14 CYELS (2012), p. 723-744.

⁵³ A. von Bogdandy and I. Venzke, *In Whose Name? A Public Law Theory of International Adjudication* (Oxford, 2014), p. 196.

⁵⁴ F. Cross and E. Tiller, ‘Understanding Collegiality on the Court [Symposium: Positive Approaches to Constitutional Law and Theory]’, 10 University of Pennsylvania Journal of Constitutional Law (2008), p. 257-271.

disagree with the result.’⁵⁵ This also confirms that, whilst legal coherence and legal consistency are regulative ideals in any judicial decision making, legal argumentation is equally a conversation between Court members, testing, disagreeing and refining a legal argument.

The French judge Garapon said that ‘to grasp a culture thus involves one in trying to formulate what is so obvious for the members that ‘it goes without saying’. Our interpretation of collegiality goes against the view commonly heard but not evidenced, that too many judges are ‘captured’ by their legal secretaries because - for example - the judges do not fluently speak the working language of the Court (French) and therefore they give too much discretion to their legal secretaries in drafting the judgment. While it is difficult to establish evidence of our understanding of collegiality, we expect our interpretation to operate to some substantial degree. Thus, at the end of a lengthy discussion with a member of the Court about various rules of procedures, that member added, jokingly: “and the worst is the principle of collegiality”, in the sense that you must listen to your colleagues’ arguments and seek consensus or a compromise even though you may be deeply convinced that your own way of thinking should prevail. Collegiality will be chilled by a lack of responsiveness to the opinions of your colleagues.

Fourth, collegiality also supports unity in diversity. When it comes to textual interpretation, collegiality implies extracting an autonomous European meaning out of a commonly used legal term among various Member States. This requires a certain detachment from one particular legal culture within the deliberation as much as the ability to acknowledge the diversity of legal solutions to a particular problem – a diversity that greatly increased following with the successive enlargements of the Union. National references are only accepted when absolutely needed, that is, when it happens that a legal question is settled by the case law or a particular statute in one’s own country and it isn’t settled in EU law. In that case, then references to the reasons for a particular solution available in a specific Member State would be considered. This then explains that the Court’s judgments avoid openly linking a particular interpretation of the law to a particular legal system. Koen Lenaerts similarly cites collegiality as a fundamental constraint upon the Court’s form of judicial reasoning.⁵⁶

⁵⁵ R. Plender, ‘Oral procedure’, in R. Plender (ed.), *European Courts: Practice and Precedents* (Sweet & Maxwell, 1997), p. 427.

⁵⁶ K. Lenaerts, ‘How the ECJ thinks: a study on judicial legitimacy’, 36 *Fordham International Law Journal* (2013), p. 1302-1371.

Some have argued that governments could seek to appoint judges who share their ideological orientation, and that the collegiate structure encourages the Court to make “majoritarian” rulings— i.e., rulings that reflect the views of judges appointed by a majority of Member State governments’.⁵⁷ Our contention, however, is that collegiality will moderate individual ideological or policy preferences. Collegiality is a matter of rational choice, as judges are ‘locked into intricate webs of interdependence where the impulse to speak in a personal voice must always be balanced against the need to act collectively in order to be effective’.⁵⁸

This is not to decry the criticisms of the well-known brevity of the Court’s judgments. There may be greater need for expert discussion of the implications of some cases, and some cases may not greatly assist domestic judges in their resolution of a dispute. Our argument has instead been that the principle of collegiality does, and should, apply as a necessary corollary of judicial independence and judicial impartiality.

§6. CONCLUSIONS

This article has demonstrated how the judicial selection, appointment and renewal processes deeply constrain and influence decision making processes at the Court of Justice. It is often said that the creation of the Court was only hesitantly accepted,⁵⁹ but this falls short of a justification for the damaging impact caused by a short tenure period combined with the permanent triennial renewal of sitting judges at the Court of Justice. We have argued, first, that those institutional constraints constitute a fundamental source of instability at the Court of Justice and, second, that the discretion left to Member States for renewal is a concern for judicial independence. Some may suggest that the instability is more pronounced at the General Court than at the Court and that in practice, in many cases, judges and advocate generals are re-appointed. This would however miss the point that the Court as a whole needs long-term stability to function properly and with convincing authority. Further, the ‘overall’ benevolent use, in practice, of the Member States’ discretionary power to renew an appointment at the Court of Justice doesn’t, in itself, guarantee an independent process of

⁵⁷ R. Daniel Kelemen, ‘Selection, Appointment, and Legitimacy. A Political Perspective’ in M. Bobek (ed.), *Selecting Europe’s Judges* (OUP, 2015), p. 244-258.

⁵⁸ F. Cross and E. Tiller, 10 *University of Pennsylvania Journal of Constitutional Law* (2008), p. 259.

⁵⁹ D. Tamm, in *The Court of Justice and the Construction of Europe: Analyses and Perspectives on Sixty Years of Case-law - La Cour de Justice et la Construction de l’Europe: Analyses et Perspectives de Soixante Ans de Jurisprudence*, p. 16.

renewal. In answer to those issues, Treaty revision towards one single judicial mandate would be our preferred remedy but it is unlikely to happen. So our first recommendation, considering the need for stability and greater independence, has been that Member States should expressly begin any appointment process in the General Court with a perspective of two terms of office mandates.

More broadly, this article has examined the current stronghold of Member States on the judicial selection process. Unlike other international courts, the Court's primary interlocutors are domestic jurisdictions, and we have suggested a greater emphasis on judicial experience of any kind from nominated candidates, or that domestic judges be encouraged to act as legal secretaries, in order to address the concern that the Court's rulings must hit the ground running. If this is not possible then agreement from Member States should be sought to allow the judges who are not renewed, or who retire, to continue with their assigned cases, perhaps for fixed period of time, as happens in some international courts.

Above all, greater scrutiny of the Member States' traditions and expectations in relation to judicial appointments can only help towards what might be, in a long term perspective, a truly integrated European judiciary. Thus the Panel can and should ask Member States who repeatedly nominate male judges about judicial diversity statistics and any practices that may be under way to improve the ratios of women and under-represented groups.

Against all institutional constraints considered in this article, the principle of collegiality can be seen as an internal reaction within the Court to ensure independence in case allocation, impartiality in difficult cases, and as a means towards a jurisprudence that is not too closely based on the legal culture or traditions of any particular Member State. But this latter concern does mean that some judgments may appear to be compromises, and more radical reform will be needed for those who hanker after clearer and bolder decisions. The proposals outlined in that article, taken together, would likely cause a culture change at the Court. Collegiality should still apply, but the style of judgments may themselves start to become more open and increase the reach of those judgements within domestic jurisdictions. More ambitious judicial reforms can only succeed with in mind a single, non-renewable term of office, without any triennial renewal of the Court membership. Only then we can hope for an unequivocal answer to our initial interrogation about the Court's belonging.